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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,471	09/08/2003	Jonathan R. Brock	B70.12-0001	2674
27367 7590 08/07/2007 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			EXAMINER MCCARRY JR, ROBERT J	
			ART UNIT 3617	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/657,471

Applicant(s)

BROEK, JONATHAN R.

Examiner

Robert J. McCarry, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 7, 8, 12-18 is/are rejected.
- 7) ☒ Claim(s) 9, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 5, 7, 8 and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black (US 4,185,846) in view of Clark et al (US 6,476,603).

Black discloses a creeper comprised of a body 10, generally shown in figure 1, having a support feature disposed on the top surface. The support features are comprised of a backrest 12 and seat member 13. The backrest 12 can be raised and lowered to support the user at various heights, so that the user can accomplish various tasks. The creeper 10 is further comprised of a plurality of wheels that engage with a pair of rails 16 mounted on the ground below the creeper 10. The wheels are best shown in figures 2 and 3 and also in figure 8. At each corner of the creeper there is a set of wheels, comprising four wheels. Two wheels engage the top surface of the rail while two wheels engage either side of the rail. The wheels on the creeper allow for movement of the creeper along the rails 16 and the rails may be moved along the ground by the user to extend the range of the creeper.

Black discloses the wheeled creeper as described above. However, Black does not disclose the used of flanged wheels on the creeper. Clark et al discloses a carriage having a plurality wheels for engaging rails. Each wheel has a flange on either side to

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engage the sides of the rails and hold the carriage steady on the rails. It would have been obvious to one of ordinary skill in the art to have used wheels, like those found in Clark et al, as a teaching to show that rail engaging wheels, like that of Black would better engage the rails with flanges on either side. The flanges would allow for better stability and control of the creeper as the user moved along the rails, especially with the support structure raised so the user can work above.

### ***Response to Arguments***

Applicant's arguments filed May 21, 2007 have been fully considered but they are not persuasive. Applicant argues that the prior art of Black and Clark et al are not from analogous art. Applicant argues that the reference of Clark et al shows a brush assembly for a test appartus and is in no way analogous to the present claims. Interpreted in the broadest sense, the claimed invention is a wheeled vehicel guided by a track. Clark et al also shows a wheeled vehicle guided by a track. While the present invention and the prior art are used for different tasks they are still wheeled vehicles guided by rails. Therefore the two are analogous and thus leaves the combination obvious to one of ordinary skill.

Applicant argues that the prior art combination is not obvious because "there was no common sense rationale to combine" and that the "knowledge of Clark et al is outside the ordinary skill, creativity and common sense in the art." The claims of the present invention recite a mechanics track creeper having flanged wheels for interfacing with a guide rail to allow movement of the creeper. If one were to desire wheels for interfacing with a rail on a mechanics creeper, one of ordinary skill would look to

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vehicles having flanged wheels for riding on rails. The intention would be one of common sense to understand that by using flanged wheels on a mechanics creeper then the predicted obvious outcome would be that the creeper would then be able to interface with rails as its form of movement. The Examiner has not relied on the vehicle of Clark et al and all of its capabilities and has not used Black and Clark et al in a literal combination. The Examiner has simply used the features of flanged wheels on a wheeled vehicle as a teaching to show the structure needed to properly and efficiently move a vehicle along a set of rails.

***Allowable Subject Matter***

Claims, 6, 10 and 11 are allowed.

Claims 9, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (571) 272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert J. McCarry, Jr.  
Examiner  
Art Unit 3617

RJM  
July 24, 2007



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